

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

LETTERS PATENT APPEAL No 467 of 1998

in

SPECIAL CIVIL APPLICATION No 7284 of 1993

with

Civil Application No. 7525 of 1998

For Approval and Signature:

Hon'ble MR.JUSTICE C.K.THAKKER and  
MR.JUSTICE A.M.KAPADIA

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
  2. To be referred to the Reporter or not?
  3. Whether Their Lordships wish to see the fair copy of the judgement?
  4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
  5. Whether it is to be circulated to the Civil Judge?

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MOHAMMAD ADAM KALVANIA

Versus

COLLECTOR

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Appearance:

MR PK PAREKH for Appellant  
MR MA BUKHARI AGP for respondents No.1 to 4.  
MR MIHIR H JOSHI for respondent No.5.

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CORAM : MR.JUSTICE C.K.THAKKER and  
MR.JUSTICE A.M.KAPADIA

Date of decision: 07/09/98

ORAL JUDGEMENT (Per C.K. Thakker, J.):

1. Admitted. Notice of admission is waived by Mr. M.A. Bukhari, learned AGP for respondents No.1 to 4 and Mr. Mihir Joshi, learned advocate for respondent No.5. In the facts and circumstances of the case, the matter is taken up for final hearing today.

2. This appeal is filed against judgment and order passed by learned Single Judge on March 22, 1998 in Special Civil Application No. 7284 of 1993.

3. The appellant is the original petitioner. He approached this Court by filing Special Civil Application No. 7284 of 1993 for appropriate writ, direction or order directing respondent authorities not to take possession of land of the petitioner bearing S.No. 1855 of Prabhas Patan, admeasuring 3 Acres and 14 gunthas. It was the case of petitioner in the petition that one Hasan Pir Kalvaria was his predecessor-in-title and he was having land bearing S.No.1855 of village Prabhas Patan. In Record of Rights and Village Form 7-12, name of deceased appeared. The deceased paid revenue for the said land. It is asserted by appellant that even today, he is in possession of the land. The case of appellant/petitioner was that no proceedings were initiated under the Land Acquisition Act, 1894 ('the Act' for short). It was contended that no notification was issued under Section 4 as well as under Section 6, no opportunity was afforded to the petitioner or his predecessor in title, no award was made under the Act, and, hence, neither the deceased nor his heirs and successors could be deprived of their right to hold property, that is, the land in question and hence the action was illegal. It was also contended that it was not correct that possession was taken over by the authorities. As the action was illegal, the petitioner was entitled to ask appropriate relief from Court.

3. The respondents appeared. An affidavit in reply was filed by one Mr. M.S. Arvadia, Range Forest Officer, Mangrol Range. In the said affidavit, it was stated that the petitioner was neither an owner nor was in possession of the land. The land in question belonged to Shree Somnath Trust and the Trust is in possession thereof. The land was handed over to the Forest Department by the State Government which was now in possession of Shree Somnath Trust. The land was obtained for the purpose of nursery as back as on August 7, 1953 and since then the Department was in possession. It appears that the Trust also appeared and contested the matter contending that they were in possession of the

land and petitioner has no right over the land.

4. After hearing the parties, learned Single Judge recorded certain findings. According to learned Single Judge, the Revenue Record produced by petitioner had shown that for the period between S.Y. 2008 to 2011, i.e., 1958 to 1961 A.D., the petitioner was in possession. But thereafter no record was produced to show that the petitioner continued to remain in possession. Learned Single Judge also observed that from the affidavit of Mr. Arvadia it is clear that the land in question was handed over to Forest Department and since then it was not in possession of petitioner. It was further observed by learned Single Judge that a deed of settlement was executed on January 21, 1950. Possession was taken over by the Department in 1951 and an amount of Rs.742/- as compensation was paid to Hasan Pir Kalvaria, predecessor in title of petitioner. An entry was also made to that effect. Thereafter occupant's name was shown as "Shree Somnath Trust".

5. So far as this entry is concerned, it was argued by learned counsel for the petitioner/ appellant before the learned Single Judge that the said entry was made only in 1971. If the possession was handed over to Shree Somnath Trust in fifties or in sixties, there was no reason for making the entry in 1971. This was explained by the Trust stating that after coming into force of the Bombay Public Trust Act, 1950, in the year 1964 necessary mutation entries were made and that is why entry was made in 1971.

6. It cannot be said that the reasons recorded by the learned Single Judge are not germane or that the order requires any interference being unlawful or ultra vires. It was contended by Mr. Parekh that even today the appellant is in possession. So far as this finding is concerned, as the learned Single Judge has observed, the Revenue Record was upto 1961. It was further contended by Mr. Parekh that India is a secular State and no land can be acquired for religious purpose in a secular State which is violative of the provisions of Constitution, Secular State being basic structure of the Constitution. It is further submitted that when no notification was issued/published and award was made under the Land Acquisition Act, it was not open to the authorities to dispossess the petitioner/ appellant or deprive the right of property. In our opinion, in the facts and circumstances, it cannot be said that the appellant was in possession and continue to remain in possession. On the contrary, the learned Single Judge

recorded a finding that possession was already taken over by the authorities and amount of compensation was paid to predecessor in title of the petitioner. Possession was with Forest Department which was subsequently given to Shree Somnath Trust.

7. In the facts and circumstances, we do not find any reason to interfere with the order passed by learned Single Judge so far as the principal relief is concerned.

8. It was finally contended by learned counsel for the appellant that the learned Single Judge directed the petitioner to pay cost of the petition to respondent No.5, Shree Somnath Trust, which was quantified at Rs.1500/- In the facts and circumstances of the case, when the petitioner had some grievance and he approached this Court by filing a petition which was admitted and interim relief was granted, in our opinion, it would be in the interest of justice if he is not asked to pay cost to respondent No.5. To that extent, in our view, the judgment and order requires interference and the appeal is accordingly allowed to that extent only.

9. For the foregoing reasons, so far as the order passed by learned Single Judge is concerned, we do not find any infirmity and confirm it on merits. So far as payment of cost of Rs.1500/- to respondent No.5, Shree Somnath Trust, is concerned, it is hereby set aside. The appeal is accordingly disposed of. In the facts and circumstances of the case, there shall be no order as to costs.

10. No order on Civil Application.

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